

“HALLMARK OF JUSTICE”

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Let justice be done in criminal justice system against the offence of human trafficking.

Trafficking in human being is an organised crime. Trafficking in persons is the act of recruiting, transporting, harbouring, transferring or receiving a person by means of use of force or threat or by coercion or fraud or deception for the purpose of exploitation. Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Trafficking Protocol) that was adopted in the year of 2000 and came into force in the month of December, 2003, defines trafficking as :

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

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(d) “Child” shall mean any person under eighteen years of age.

We find trafficking of person in the forms of :-

- (1) Child trafficking for domestic labour and other forms of labour.
- (2) Trafficking for forced marriage.
- (3) Trafficking for commercial sexual exploitation.
- (4) Trafficking for adoption.
- (5) Trafficking for organ donation.
- (6) Trafficking for the purpose of begging.

The Government data shows that over 1,26,000 cases of child labour trafficking were registered during the year of 2011-2012. The trafficking of children is being undertaken by illegal placement agencies. Traffickers kidnapped children and then forced them to beg. Often young women and girls are lured into the idea of a happy married life. Traffickers supply the victims for the purpose of prostitution. A NGO, Bachpan Bachao andolan, has reported a total of 1,17,480 Children were missing in 2010-2011 and in the period of the year 2009-2011, a total of 1,59,418 women were reported missing.

In Writ Petition (Civil) No. 75 of 2012 Bachpan Bachao Andolan versus Union of India and others, Hon’ble Supreme Court has passed order for mandatory registration of FIR in case of missing children and appropriate steps for investigation immediately. In Writ petition (Crl) No. 610 of 1996 Hori Lal versus Commissioner of Police, Dehli and others, the Hon’ble Court laid down guidelines for effective search of the kidnapped minor girls.

Article 14 of the Constitution of India carries with it a positive concept of equality. Article 15 is an extension of Article 14. It prohibits discrimination on ground of religion, race, caste, sex, place of birth or any of them. It is the Fundamental Right of every citizen not to be trafficked. Article 23 prohibits traffic in human beings, begar and other similar forms of forced labour are offences and Article 35 of the Constitution makes the provision for legislation by the parliament to prescribe punishment for those acts which are declared to be offences under Part-III of the Constitution. Article 24 lays down that no child below the age of fourteen

years shall be employed to work in any factory or mine or engage in any other hazardous employment.

The word “begar” is not defined in the Constitution. It has defined in Wilson’s Glossary as ‘labour or service exacted by a Government or a person in power without giving remuneration for it.’ It is an instance of forced labour. ‘Bonded Labour’ is another form of forced labour. The Bonded Labour System (Abolition) Act, 1976 abolishes bonded labour.

Article 23 does not mention ‘slavery’ but Section 370 of IPC mentions ‘slavery’. Section 370 of IPC is substituted by the Criminal law (Amendment) Act, 2013 (w.e.f. 03.02.2013) as :

Whoever, for the purpose of exploitation (Actus reus) recruits, transports, harbours, transfers or receives a person or persons (at least one of the following means) by using threats, or force or any other form of coercion or by abduction, or by practising fraud, or deception or by abuse of power or by inducement including the giving or receiving of payments or benefits to achieve the consent of a person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking. First explanation of this Section is that the ‘exploitation’ shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude or the forced removal of organs and the second explanation is that the consent of the victim is immaterial in a determination of the offence of trafficking.

IPC contains other provisions that are relevant to trafficking and impose sentence for offences like kidnapping, abduction, buying or selling a person for labour/slavery, buying or selling a minor for prostitution, importing and procuring a minor girl, rape etc.

The Protection of Children from Sexual Offences Act, 2012 has been enacted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. The Immoral Traffic (Prevention) Act, 1956 provides law against commercial sexual exploitation and it prohibits prostitution. The Act provides the provisions for rehabilitation and protection to victim of commercial sexual exploitation. Child Labour (Prohibition and Regulation) Act, 1986 prohibits child labour. The Transplantation of Human organs Act, 1994 provides for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and enacts for

the prevention of commercial dealings in human organs. The Juvenile Justice (Care And Protection of Children) Act, 2000 is enacted for the best interest of children and for their ultimate rehabilitation.

Trafficking of person is a heinous crime, not just a social evil. The court must apply the 'best-interest of the victim' standard. In *State of U.P. Versus Anil Kumar*, AIR 1988 S.C. 1998, the Hon'ble Supreme Court observed. "..... it is necessary to remember that a judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

Every criminal trial is a voyage inquest of truth for public justice to punish the guilty and restore peace, stability and order in the society. For achieving this goal it must be remember that exaggerations, embellishments and inconsistencies on the fringe do not make witness unreliable. In *Bankim Chander Versus Matagini*, AIR 1919 PC 157, the Privy Council has observed. "That in Indian litigation, it is not safe to assume that a case must be false if some of the evidence in support of it appears to be doubtful or is clearly untrue, since there is, on some occasions, a tendency amongst litigants to back up a good case by false or exaggerated evidence." The maxim "falsus in uno falsus in omnibus" has no application in India since it is the duty of the court to separate grain from chaff. In the case of *Krishna Mochi Versus State of Bihar*, AIR 2002 S.C. 1965, the Hon'ble Supreme Court has ruled, "where chaff can be separated from grain, it would be open to the court to convict an accused.....".

In *State of Punjab Versus Gurmit Singh* (1996) 2 SCC 384, the Hon'ble Supreme Court has held that sexual offenders should not be shown leniency and in the *State of A.P. Versus Bodem Sundara Rao* (1995) 6 SCC 230, the Hon'ble Supreme Court has held that courts should grant stricter punishments for crimes of sexual offences.

It is true that the Judiciary provides a glimmer of hope for the common man. "Truth must triumph" is the hallmark of Justice.
